

DEC 14 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT FRANK SANCHEZ,

Petitioner - Appellant,

v.

ANTHONY A. LAMARQUE,

Respondent - Appellee.

No. 04-17140

D.C. No. CV-03-00037-SI

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Susan Yvonne Illston, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

California state prisoner Robert Frank Sanchez appeals from the district court's denial of his 28 U.S.C. § 2254 petition challenging his guilty plea

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

conviction for possession of methamphetamine and being under the influence of a controlled substance.

Sanchez contends that his guilty plea was not knowingly and voluntarily made because he relied upon the trial court's misstatement that he would be eligible to earn up to a 20% reduction in his sentence in good time credits. This issue was not exhausted in state court proceedings, and it is unclear from the record whether the state expressly waived the exhaustion requirement. *See* 28 U.S.C. § 2254(b)(3). In addition, subsequent to the district court's order denying relief, this court issued its decision in *Cassett v. Stewart*, 406 F.3d 614 (9th Cir. 2005), which establishes the appropriate standard of review of unexhausted claims under the AEDPA. *See id.* at 623-24.

Accordingly, we vacate and remand the district court's order for further proceedings on petitioner's unexhausted claim consistent with the holding in *Cassett*. *See id.* at 624-25.

VACATED AND REMANDED.